



THE CITY OF NEW YORK  
**LAW DEPARTMENT**

100 CHURCH STREET  
NEW YORK, NY 10007

JAMES E. JOHNSON  
*Corporation Counsel*

MARK D. ZUCKERMAN  
Senior Counsel  
E-mail: mzuckerm@law.nyc.gov  
Phone: (212) 356-3519  
Fax: (212) 788-9776

August 24, 2020

**VIA ECF**

The Honorable Naomi Reice Buchwald  
United States District Judge  
Southern District of New York  
500 Pearl St.  
New York, NY 10007

Re: Jabari Baker v. The City of New York, et. al., 18 Civ. 5003 (NRB)

Your Honor:

I am a Senior Counsel in the office of James E. Johnson, Corporation Counsel of the City of New York, representing defendants in the above-referenced matter. I write to respectfully request a stay of trial of this matter beginning with the defendant P.O. Pedro Jiminian's recall to active military duty, which is expected to begin in very early October, 2020, until such time as he returns from active military duty, which is expected to be approximately one year from his foregoing recall to active military duty. Alternatively, defendants respectfully request that trial be placed in abeyance until his return.

Pursuant to 50 U.S.C. 3931(d) (the Soldiers' and Sailors' Civil Relief Act), a stay is appropriate for a minimum period of 90 days where, (1) there may be a defense to the action and the defense cannot be presented without the presence of the defendant; or (2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists. P.O. Jiminian has now been recalled to active military duty beginning in very early October, 2020, and it is expected that he will be stationed in the Middle East for approximately one year.

It is clear that P.O. Jiminian has meritorious defenses to plaintiff's excessive force and false arrest claims that remain in the case, and that cannot be presented without his presence at trial of this matter, which is what remains in this case. As the Court stated in its decision on defendants' motion for partial summary judgment, there will be real issues of credibility when

this matter is tried, as defendants deny that excessive force was used, but rather that plaintiff tripped and fell at a subway turnstile while attempting to run away from the defendant police officers. As to plaintiff's false arrest claim, defendants contend that plaintiff entered the subway system without paying a fare, and instead entered through an emergency gate. P.O. Jiminian was the arresting officer for plaintiff's arrest. Thus, defendants' defenses cannot be adequately presented without P.O. Jiminian's presence at trial of this matter. Under the foregoing authorities, therefore, defendants respectfully request that this matter be stayed pending P.O. Jiminian's return from active military duty, or alternatively that trial be placed in abeyance until such time as he returns.

Plaintiff takes no position on this request.

Should this request be granted, I propose to provide the Court status reports every three months as to whether P.O. Jiminian has returned from active military duty.

This is the first such request for a stay of trial of this matter, or alternatively that trial be placed in abeyance.

Thank you for your consideration herein.

Respectfully submitted,


/s/ Mark D. Zuckerman

Mark D. Zuckerman  
Senior Counsel

cc: All Counsel (via ECF)

Application granted. Counsel for defendants is directed to file status reports with the Court every three months regarding Mr. Jiminian's active military duty status. The Clerk of Court is respectfully directed to terminate the motion pending at ECF No. 56.

**SO ORDERED.**



NAOMI REICE BUCHWALD  
UNITED STATES DISTRICT JUDGE

Dated: New York, New York  
August 26, 2020